



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 12, 2009

Mr. Floyd M. Akers
City Attorney
Pflugerville Police Department
P.O. Box 679
Pflugerville, Texas 78691

OR2009-16106

Dear Mr. Akers:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 361200.

The Pflugerville Police Department (the "department") received a request for report number 09060653. You claim the submitted report is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This exception encompasses information protected by other statutes, such as section 58.007 of the Family Code, which provides in part:

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

(1) if maintained on paper or microfilm, kept separate from adult files and records;

(2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are

separate and distinct from controls to access electronic data concerning adults; and

(3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapters B, D, and E.

Fam. Code § 58.007(c). Section 58.007(c) is applicable to records of juvenile delinquent conduct or conduct indicating a need for supervision that occurred on or after September 1, 1997. Although you claim the submitted report is confidential under chapter 58 of the Family Code, the submitted report does not involve any juvenile delinquent conduct or conduct indicating a need for supervision by a juvenile. *See* Fam. Code § 51.03(a), (b) (defining “delinquent conduct” and “conduct indicating a need for supervision” for purposes of Fam. Code § 58.007). Accordingly, we conclude the submitted report is not confidential under chapter 58 of the Family Code.

Section 552.101 also encompasses section 261.201 of the Family Code, which provides in relevant part:

(a) [T]he following information is confidential, is not subject to public release under [the Act], and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

(1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and

(2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

...

(k) Notwithstanding Subsection (a), an investigating agency . . . on request, shall provide to the parent, managing conservator, or other legal representative of a child who is the subject of reported abuse or neglect, or to the child if the child is at least 18 years of age, information concerning the reported abuse or neglect that would otherwise be confidential under this section. . . The investigating agency shall withhold information under this subsection if the parent, managing conservator, or other legal representative of the child requesting the information is alleged to have committed the abuse or neglect.

(l) Before a child or a parent, managing conservator, or other legal representative of a child may inspect or copy a record or file concerning the child under Subsection (k), the custodian of the record or file must redact:

(1) any personally identifiable information about a victim or witness under 18 years of age unless that victim or witness is:

(A) the child who is the subject of the report; or

(B) another child of the parent, managing conservator, or other legal representative requesting the information;

(2) any information that is excepted from required disclosure under [the Act], or other law; and

(3) the identity of the person who made the report.

Fam. Code § 261.201(a), (k), (l). The submitted report reflects it was used or developed in an investigation of alleged child abuse under chapter 261; therefore, this report is within the scope of section 261.201 of the Family Code. *See id.* § 261.001(1) (defining “abuse” for purposes of chapter 261). However, the report also reflects the requestor in this instance is the mother of the child victim listed in the report, and is not alleged to have committed the alleged abuse. Consequently, this report may not be withheld from this requestor based on section 261.201(a).¹ *Id.* § 261.201(k). Section 261.201(l)(2) states, however, any information that is excepted from required disclosure under the Act or other law may still be withheld from disclosure. *Id.* § 261.201(l)(2). Accordingly, because you also assert the report is excepted under section 552.108 of the Government Code, we will address your argument under that exception.

Section 552.108(a)(1) of the Government Code excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime.” Gov’t Code § 552.108(a)(1). A governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You inform this office report number 09060653 is currently under investigation by the department. You also state release of the information at this time would seriously jeopardize this investigation. Based on your representations and our review, we determine release of most of the information in the submitted report would interfere with the detection, investigation, or prosecution of crime.

¹Because this requestor has a special right of access to information that would ordinarily be confidential under section 261.201 of the Family Code, the department must again seek a decision from this office if it receives another request for the same information from a different requestor.

See Houston Chronicle Publ'g Co. v. City of Houston, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases).

Section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle*, and includes the identity of the complainant. *See Houston Chronicle*, S.W.2d at 186-88; *see also* Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). We note, however, section 261.201(1)(3) of the Family Code states the reporting party's identity must be redacted. *See* Fam. Code § 261.201(1)(3). Accordingly, with the exception of basic information, the department may withhold report number 09060653 under section 552.108(a)(1). However, in releasing basic information, the department must withhold the reporting party's identity under section 552.101 in conjunction with section 261.201(1)(3). The remaining basic information must be released.

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Bob Davis
Assistant Attorney General
Open Records Division

RSD/cc

Ref: ID# 361200

Enc. Submitted documents

cc: Requestor
(w/o enclosures)